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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,381	08/01/2003	Gene Paul Northrop	Northrop-2	4152
31331	7590	04/05/2004	EXAMINER	
RODNEY A. CORL 2338 CATAWBA RD. TROUTVILLE, VA 24175				PARSLEY, DAVID J
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/632,381	NORTHROP, GENE PAUL
Examiner	Art Unit	
David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 August 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 August 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

Detailed Action

Specification

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it compares applicant's invention to the prior art inventions and it contains more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,138,789 to Hood.

Referring to claim 1, Hood discloses a fishing lure which resembles a fish of prey chasing its own prey as it is drawn through water, comprising, a body – at 63 or 63', having a longitudinally extending axis and at least one hook – at 62 or 62', attached to the body, a first wire – at 61a or 61a', integrally molded with the body – see for example column 4 lines 60-65, extending forwardly from the body and extending outwardly at a small angle to the longitudinally axis – see for example figure 8, the first wire extending a first distance, the first wire being bent at the culmination of the first distance at an angle to extend perpendicular to the longitudinally extending axis to extend for a second distance – see for example figure 8, the first wire being bent at the culmination of the second distance at a right angle to extend rearwardly parallel to the longitudinally extending axis and to extend for a third distance – see for example

figure 8, a first spinner – at 40a, 40a; or 85a, rotatably attached to the first wire along the third distance – see for example figure 8, a second wire – at 61b or 61b', integrally molded with the body – see column 4 lines 60-65, extending forwardly from the body and extending outwardly at a small angle to the longitudinally extending axis in a direction opposite the first wire – see for example figure 8, the second wire extending for a fourth distance, the second wire being bent at the culmination of the fourth distance at an angle to extend perpendicular to the longitudinally extending axis to extend for a fifth distance – see for example figure 8, the second wire being bent at the culmination of the fifth distance at a right angle to extend rearwardly to the longitudinally extending axis to extend for a sixth distance – see for example figure 8, a second spinner – at 40b, 40b' or 85b, rotatably attached to the second wire along the sixth distance – see for example figure 8, wherein the first and second spinners are positioned entirely in front of the body – at 63, so that as the lure is drawn through the water the body resembles a fish chasing after prey – see for example figure 8.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,306,640 to Nelson.

Referring to claim 11, Nelson discloses a fishing lure which is to be drawn through water, having a spinner – at 10 or 11 attached thereto the spinner comprising, a body – at 10 or 11, of generally rectangular planar shape, the body having an axis about which the spinner is caused to rotate, the axis extending longitudinally along a center line of the body, the body having a left half extending to one side of the center line, the body having a right half extending to another side of the center line, the left half having a leading edge portion – 25 or 31 and a trailing edge portion – at 27 or 29, the right half having a leading edge portion – 24 or 30 and a trailing edge

portion – at 26 or 28, the leading edge portion of the left half and the trailing edge portion of the right half being turned downwardly, the leading edge portion of the right half and the trailing edge portion of the left half being turned upwardly, the upwardly turned portions and the downwardly turned portions are turned upwardly and downwardly respectively a constant amount across the leading edge portions and the trailing edge portions, wherein the upwardly turned portions and the downwardly turned portions cause a low drag, efficient rotating action of the spinner about the axis as the fishing lure is drawn through water – see for example figures 1-7 and columns 1-3.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hood as applied to claim 1 above, and further in view of Nelson. Hood further discloses the first and second spinners comprise a spinner body of generally planar shape with leading and trailing edge portions – see for example at 41a and 40b in figure 8. Hood does not disclose the first and second spinner each comprising, a body, of generally rectangular planar shape, the body having an axis about which the spinner is caused to rotate, the axis extending longitudinally along a center line of the body, the body having a left half extending to one side of the center line, the body having a

right half extending to another side of the center line, the left half having a leading edge portion and a trailing edge portion the right half having a leading edge portion and a trailing edge portion, the leading edge portion of the left half and the trailing edge portion of the right half being turned downwardly, the leading edge portion of the right half and the trailing edge portion of the left half being turned upwardly, the upwardly turned portions and the downwardly turned portions are turned upwardly and downwardly respectively a constant amount across the leading edge portions and the trailing edge portions, wherein the upwardly turned portions and the downwardly turned portions cause a low drag, efficient rotating action of the spinner about the axis as the fishing lure is drawn through water. Nelson does disclose the first and second spinner – at 10 and 11 each comprising, a body – at 10 or 11, of generally rectangular planar shape, the body having an axis about which the spinner is caused to rotate, the axis extending longitudinally along a center line of the body, the body having a left half extending to one side of the center line, the body having a right half extending to another side of the center line, the left half having a leading edge portion – 25 or 31 and a trailing edge portion – at 27 or 29, the right half having a leading edge portion – 24 or 30 and a trailing edge portion – at 26 or 28, the leading edge portion of the left half and the trailing edge portion of the right half being turned downwardly, the leading edge portion of the right half and the trailing edge portion of the left half being turned upwardly, the upwardly turned portions and the downwardly turned portions are turned upwardly and downwardly respectively a constant amount across the leading edge portions and the trailing edge portions, wherein the upwardly turned portions and the downwardly turned portions cause a low drag, efficient rotating action of the spinner about the axis as the fishing lure is drawn through water – see for example figures 1-7 and columns 1-3. Therefore it would have been

obvious to one of ordinary skill in the art to take the device of Hood and add the spinner of Nelson, so as to allow for the spinner to be rotatable and light reflecting to make the lure more attractive to fish.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood or Hood as modified by Nelson as applied to claims 1 or 2 above. Hood and Hood as modified by Nelson do not disclose the small angle is about 5 degrees. However this would have been an obvious matter of design choice to one of ordinary skill in the art in that applicant does not state that using an angle of 5 degrees solves any particular problem or is used for any particular reason over angles of differing values and it appears that the fishing lures of Hood and Hood as modified by Nelson would perform equally as well with an angle of 5 degrees.

Alternatively, changing the size/proportion or changes in shape that differ from the prior art do not render a claimed invention patentable over the prior art, and in this case the change of the small angle to change the proportion or shape of the device does not render the claimed invention patentable over the prior art. See, *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955), *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976), *In re Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert denied*, 469 U.S. 830, 225 USPQ 232 (1984) and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood or Hood as modified by Nelson as applied to claims 1 or 2 above, and further in view of U.S. Patent No. 6,266,914 to Johnson et al. Hood and Hood as modified by Nelson do not disclose the wires are made of titanium. Johnson et al. does disclose wires – at 14 and 16a in figure 2, made of titanium – see for example column 10. Therefore it would have been obvious to one of ordinary skill in

the art to take the device of Hood or Hood as modified by Nelson and add the wires being made of titanium of Johnson et al., so as to allow for the device to be made strong/durable as well as lightweight.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood or Hood as modified by Nelson as applied to claims 1 or 2 above, and further in view of U.S. Patent No. 4,209,932 to Pate. Hood and Hood as modified by Nelson do not disclose the wires a made of spring steel. Pate does disclose the wires – at 14 and 16, are made of spring steel – see for example column 3 lines 34-43. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hood or Hood as modified by Nelson and add the wires being made of spring steel of Pate, so as to make the lure durable and rigid for repeated use.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood or Hood as modified by Nelson as applied to claims 1 or 2 above, and further in view of U.S. Patent No. 5,038,512 to Gaal. Hood and Hood as modified by Nelson do not disclose the body has a diving lip attached at a forward portion of the body. Gaal does disclose the body – at 10-16, has a diving lip – at 13, attached at a forward portion of the body – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hood or Hood as modified by Nelson and add the body having a diving lip of Gaal, so as to allow for the lure to be placed at a desired depth in the water during fishing.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to spinner blades and fishing lures with spinner blades in general:

U.S. Pat. No. 2,167,945 to Gilliam – shows lure with spinners
U.S. Pat. No. 1,731,161 to Farley – shows lure with spinners
U.S. Pat. No. 4,510,710 to Hanna – shows lure with spinners
U.S. Pat. No. 4,819,362 to Lewis – shows spinner
U.S. Pat. No. 4,823,501 to Standish – shows lure with spinners
U.S. Pat. No. 4,947,574 to Tapley – shows lure with spinner
U.S. Pat. No. 5,050,334 to Standish – shows lure with spinners
U.S. Pat. No. 5,400,542 to Johnson – shows lure with spinner
U.S. Pat. No. 5,605,004 to Boult et al. – shows lure with spring steel wire
U.S. Pat. No. 5,911,570 to Freitas et al. – shows lure with spinners
U.S. Pat. No. 6,044,583 to Hay – shows spinner
U.S. Pat. No. 6,536,155 to Van Risseghem – shows lure with spinners

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600